time to the plaintiffs under the agreement and in this case the amount claimed in the statement of claim is not the correct amount because one guarantor, William Cheng, under his guarantee given to the plaintiffs, had admitted liability, and credit should be given of any amount paid by him. I rejected this argument. First, there was no evidence of any payment made by this guarantor. Secondly, the guarantees expressed to be given by the six guarantors under or pursuant to the agreement are so structured that each guarantor under his or its guarantee is liable only for a fixed proportion of the total sum due or owing by Freelin to the second, third, fourth, fifth and sixth plaintiffs. In this case, the proportion fixed under the guarantee is 22.73% "of all sums (whether principal interest, fee or otherwise) whatsoever which are or at any time may be or become due or owing" by Freelin to the plaintiffs, and the time for determining all such sums as due or owing by Freelin was the time when the declarations under clauses 16(A) and 16(B) were made, as in consequence of those declarations Freelin became liable to pay the amount due to the banks.

I now come to the fourth defence which, in my view, equally has no merit. It was admitted by the plaintiffs that after the execution of the agreement and the guarantee, a supplemental agreement was made amending the agreement. Under the supplemental agreement, two of the proposed guarantors, Tan Chin Nam and Tan Kin Hor, named in the agreement were substituted by Loy Hean Hiong and Chen Lip Keong. Such amendment does not in any way affect the position of the defendants under the guarantee. The amount guaranteed by the defendants is entirely a different sum from the amounts which under the agreement were to be guaranteed by Tan Chin Nam and Tan Kin Hor and which eventually were guaranteed by Loy Hean Hiong and Chen Lip Keong. There is no question of the defendants claiming any contribution against the two guarantors. In any event, the terms of the guarantee permit the parties to vary the agreement: see clause 3(A) of the guarantee.

For these reasons, I have come to the conclusion that none of the defences raised on behalf of the defendants constitute a triable issue.

Order accordingly.

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*

BRUNEI REPORTS

AHMAD BIN HAJI BAKAR v. PUBLIC PROSECUTOR

[A.Cr.J. (Roberts C.J.) 9 February 1988]

[Bandar Seri Begawan – Criminal Appeal No. 13 of 1987]

Criminal Procedure – Sentences – Appeal against – Merits of application – Public interest.

The appellant pleaded guilty to two charges. The two charges were for offences against section 6(1) of the Immigration Act (Cap. 17) ("the Act"). For one of the offences, the sentence was six months' imprisonment and for the other the sentence was three years' imprisonment. The sentences were ordered to run concurrently.

The appellant appealed against the sentences.

Held, dismissing the appeal: public interest requires that a sentence of imprisonment sufficient to deter not only the accused but other persons of a like mind shall be imposed in cases of this kind.

Case referred to:

(1) *Taib bin Gemok* v. *Public Prosecutor* [1984] 1 M.L.J. 313 (refd).

CRIMINAL APPEAL.

Mohamed Daud for the appellant.

Ahmad Isa (Deputy Public Prosecutor) for the State.

Cur. Adv. Vult.

Roberts C.J.: I am satisfied that this appeal against sentence ought to be dismissed. The appellant pleaded guilty in the magistrate's court to two charges.

The first charge was for an offence against section 6(1) of the Immigration Act (Cap. 17), punishable under section 58. Section 58 is a general section which provides that a person guilty of an offence under the Act, for which no special penalty is provided, shall be liable on conviction to a fine of $2,000 and imprisonment for six months.

The second charge is also for an offence contrary to section 6(1) of the Immigration Act, and is punishable under section 55(1) of the Act. For this offence a penalty is provided of not less than one year nor more than seven years' imprisonment or a fine not exceeding $20,000 and a whipping. The magistrate imposed a sentence of three years' imprisonment on this charge, to run concurrently

with that of six months on the first charge. In addition, the appellant's boat was forfeited to the state.

The defendant had been previously convicted of two offences of a similar character, although he was only aged 22 at the time of his last conviction. In 1984, he was convicted both of aiding and abetting a person to enter or leave Brunei in contravention of the Act, contrary to section 55(b), and of an offence against section 6(1) of the Immigration Act. These are equivalent to the two offences to which he pleaded guilty on this occasion. It must therefore be expected that he would not receive the same leniency as he would have done had he been a man of clear record.

The defence argued that the defendant would have been afforded a better opportunity to put forward facts as in mitigation if he had been represented at the trial. This may well be so, and is perhaps an argument for a wider representation of accused persons. On the other hand, it is not by itself a proper ground on which a sentence, which is in other respects proper, should be upset on appeal.

The magistrate was also criticized for wrongfully applying the guidelines which were provided by the Chief Justice in Revision Case No. 2478 of 1985 and others, when he observed that the normal penalty which ought to be imposed under the Immigration Act after a trial was not less than two years and a substantial fine, in the case of offences carrying a maximum of seven years, and different penalties for other offences under section 55 which are not relevant here.

Magistrates were told, of course, that although these were the usual sentences, it remained open to them to exercise their discretion to depart from this tariff in appropriate cases. Thus it was open to the magistrate to impose a sentence in excess of what was there suggested, and to impose the maximum penalty for the offence charged.

In this case the magistrate decided to impose a total sentence in excess of the minimum sentence that was recommended by the Chief Justice almost two years ago. I cannot say that he was wrong to do so, bearing in mind the fact that the appellant has a previous record for the same offence and of the continuing necessity to ensure that this offence is treated in Brunei Darussalam as one of great seriousness.

It may very well be that in other jurisdictions it is a lesser offence and that there is an argument which can be advanced, for what it is worth, that persons in Limbang maintain a personal relationship with those in Brunei Darussalam. Nevertheless, it is clear that the public interest is such that, notwithstanding what Rhind J. said in *Taib bin Gemok* v. *Public Prosecutor*,[1] the public interest does require that a sentence of imprisonment, sufficient to deter not only the accused but other persons of a like mind, shall be imposed in cases of this kind.

For all these reasons, I find it necessary to dismiss the appeal against sentence and to uphold the order which the magistrate made.

Appeal dismissed.

Solicitors: *Daud Ismail, Barry Sigar & Co.*

PUBLIC PROSECUTOR v. KHOO BAN HOCK & ORS.

[O.C.J. (Mortimer J.) 17 October 1987]

[Bandar Seri Begawan – Criminal Case No. 2904 of 1986]

Criminal Procedure – Jurisdiction – Whether court has jurisdiction to entertain charges of criminal conspiracy – Penal Code, ss. 2 & 120(A) – Criminal Procedure Code, s. 7.

Criminal Law – Criminal conspiracy offence – Ingredients of offence – Whether offence committed outside Brunei – Offence is a continuing one – Effect of – Penal Code, s. 120(A).

Criminal Law – Conspiracy to defraud – Whether an offence in Brunei – Penal Code, s. 43.

In this case, the accused were charged with, *inter alia*, the offence of criminal conspiracy. As preliminary points of law, counsel for the accused raised three main issues. They were:

(i) whether the court has jurisdiction to entertain the charges of criminal conspiracy;

(ii) whether the charge of conspiracy to defraud is an offence in Brunei;

(iii) whether it is unfair to the accused to have all the conspiracy charges tried together.